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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 26, 1996

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Comments, CC Docket No. 96-150

Dear Mr. Caton:

Enclosed for filing please find an original and eleven copies of Comments of the Association of Telemessaging Services International (ATSI) in the proceeding, FCC 96-309, CC Docket No. 96-150. Additional copies have been delivered to Janice Myles of the Common Carrier Bureau and the International Transcription Services.

Sincerely,

Herta Tucker
Executive Vice President

cc: International Transcription Services, Inc.
2100 M Street, N.W., Suite 140

Janice Myles (1 copy plus diskette)
Common Carrier Bureau
1919 M Street, N.W., Room 544

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington , D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996)
)
Accounting Safeguards Under the)
Telecommunications Act of 1996)

CC Docket No. 96-150

**COMMENTS OF THE ASSOCIATION OF
TELEMESSAGING SERVICES INTERNATIONAL**

**ASSOCIATION OF TELEMESSAGING
SERVICES INTERNATIONAL (ATSI)**

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OUTLINE OF ARGUMENTS

- I. Section 260 prohibits both the direct or indirect subsidization of the incumbent's telemessaging services *and* any preference or discrimination in favor of its telemessaging services.
- II. Access to incumbent network functions and features must be available at costs that are just, reasonable and nondiscriminatory.
- III. Unbundling must be made available at the smallest possible level of costs disaggregated on a service-by-service basis.
- IV. The Commission should establish Federal guidelines for collocation so that ESPs may access the incumbent network with costs comparable to collocation within the Central Office.
- V. The Commission should establish opportunities for alternative dispute resolution to minimize costs and lost business opportunities associated with protracted proceedings and complaint procedures.

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**COMMENTS OF THE ASSOCIATION OF
TELEMESSAGING SERVICES INTERNATIONAL**

The Association of Telemessaging Services International (ATSI) submits the following comments in response to the Commission's Notice of Proposed Rulemaking in the proceeding, FCC 96-309, adopted and released July 17, 1996.

STATEMENT OF INTEREST

The Association of Telemessaging Services International (ATSI) represents Enhanced Service Providers (ESPs) who offer, first and foremost, live, "person-to-person" answering services to the telephony customer. ATSI also represents ESPs who offer automated telemessaging services. Telemessagers provide opportunities for call completion for their customers and offer options of voice messaging services, paging activation, as well as over-the-phone order taking and information exchange. Over 95 percent of the membership qualifies as small businesses, and 60

percent of the membership are represented by female owned and operated business enterprises.

ATSI members have provided the American public with the latest telecommunications service offerings for over 60 years and introduced to the market voice messaging services to supplement its traditional live telephone answering service. Telemessagers were the first Enhanced Service Providers (ESPs) in the telecommunications field and today represent the only ESPs whose basic service involves, first and foremost, "people answering people". Because of this unique aspect of telemessaging services, telemessaging plays an important public service function, providing live answering options for the medical and health service sectors, and others, where person-to-person communication is essential.

Telemessagers require access to the incumbent local exchange carrier's (incumbent's) network elements, including their basic service arrangements, functions and features, in order to provide telemessaging services to their customers. Specifically, telemessagers require access to such basic network functions as call forwarding, operator revert, personal receptionist service, dial tone, stutter dial tone, telephone listings, directory assistance, paging activation, and 2-way DID (directed inward dialing). The industry also requires access to such capabilities as integrated services digital network (ISDN), signaling system 7 (SS7) and the advanced intelligent network (AIN). Telemessagers require these facilities and capabilities in order to assure their ability to provide satisfactory call completion. There are no technically feasible alternatives and no bypass options available, and the cost of accessing these offerings represent the second highest operating cost for telemessagers. The development of safeguards for pro-competitive access to the incumbent network is therefore crucial to the ability of telemessaging industry to offer competitive services in the marketplace.

SUMMARY

ATSI supports the development of a regulatory framework that offers ESPs like telemessagers the necessary opportunities to competitively offer enhanced telecommunications services. Effective competition requires unimpeded access to incumbent network elements, which include their basic service arrangements, functions and features, at rates that both allow ESPs to offer competitive services and prohibits an incumbent from offering similar services at noncompetitive, below market prices.

ATSI supports the development of Federal guidelines as a means of ensuring a favorable environment for ESPs offering competitive, enhanced telecommunications services. Federal guidelines are particularly relevant in the provision of interconnection, collocation and unbundled network elements at prices that are just, reasonable and nondiscriminatory.

Telemessagers rely on access to specific basic service arrangements, functions and features within the incumbent network, at points of interconnection and with opportunities for collocation that will not impede their ability to offer the variety of services associated with telemessaging. Telemessagers also require access to network elements, and their basic service arrangements, functions and features, unbundled at the smallest practical level. These must be made available at costs disaggregated at the same levels so that the costs incurred by telemessagers for the use of each network element are reflected in the pricing of competitive services offered by the incumbent for the use of the same network element.

ATSI also supports the development of Federal guidelines encouraging the use of alternative means for resolving disputes between incumbents and ESPs regarding interconnection, unbundling and collocation, and discriminatory pricing and practices relating to these, will help small businesses minimize costs associated with prolonged procedures.

Finally, ASTI urges the Commission to ensure that the implementation of the Act achieves following outcomes:

1. Access to incumbent network elements, and their basic service arrangements, functions and features, must be made available and remain unimpeded so that ESPs have every opportunity to offer desired telecommunications services at prices that are competitive and of quality that is acceptable to the marketplace;
2. The acceptability of points of interconnection, levels at which network elements are unbundled, and collocation arrangements must be determined in the final analysis in terms of whether or not the ESP is able to offer the same or similar competitive services as is the incumbent itself; and
3. Competitive services offered by the incumbent and similar services offered by the ESP must share the same cost structure in terms of the network elements utilized (which include their basic service arrangements, functions and features) for each telecommunications service offered so that the cost component of each competitive service for the ESP and the incumbent are essentially identical and the rates paid for the network elements by the ESP is no greater than the cost attributed to that element by the incumbent.

COMMENTS

I. Section 260 prohibits both the direct or indirect subsidization of the incumbent's telemessaging services *and* any preference or discrimination in favor of its telemessaging services.

The Commission recognizes that Section 260 of the Telecommunications Act of 1996 (Act) prohibits⁹ the incumbent from subsidizing its telemessaging services directly or indirectly from its telephone exchange service or its exchange access, and states:

The principal goal of the prohibition against subsidization in Section 260(a)(1) appears to be to ensure that the telemessaging service operations of incumbent local exchange carriers do not result in increased rates for telephone exchange service and exchange access. *See* NPRM Paragraph 29.

ATSI agrees with this interpretation of the intent of Section 260, but would argue that it is the competitive advantage that is realized by the incumbent relative the telemessenger that is the principal concern of the provision. Section 260(a)(2) further prohibits any preference or discrimination on the part of the incumbent in favor of its telemessaging services in its provision of telecommunications services.

The Commission discusses existing rules applicable to telemessaging and suggests that these are sufficient to safeguard against the subsidies prohibited by Section 260. *See* NPRM Paragraphs 30-33. ATSI disagrees with this conclusion to the extent that existing accounting safeguards fall short of equalizing the cost attributions identified above and otherwise fail to eliminate any

preferences or discrimination that create unfair and anti-competitive positions of advantage in favor of the incumbent.

II. Access to incumbent network functions and features must be available at costs that are just, reasonable and nondiscriminatory.

The Commission should establish safeguards that ensure the availability of interconnection arrangements and access to unbundled elements at costs that do not discriminate against ESPs. As a general principle, the Commission should require incumbents to offer interconnection and unbundled elements equal in type, quality and costs to those that incumbents provide for themselves in the marketing of competitive services.

Past experience has shown that incumbents have the opportunities to gain market advantages over ESPs, and knowingly or unknowingly do so, by offering competitive services that utilize network elements at prices offered to the customer that do not reflect the true costs required to bring the service to market. In these instances, the incumbent will effectively charge itself less than it charges competitors for the same functions and features by failing to impute total costs to each network element utilized.

The costs attributed to incumbent network functions and features should be identical to those used to determine charges for their use by telemessagers. Just as elements utilized by the incumbent should be made available to ESPs like telemessagers for purposes of achieving the pro-competition goals of the Act, the costs attributable to their use by the incumbent for purposes of providing its own enhanced telecommunications services should be the same of the costs attributable to their use by ESPs.

Safeguards must create a level playing field for all parties to the negotiations process with outcomes that include interconnection, collocation and unbundling arrangements that reflect actual costs disaggregated on a service-by-service basis and allow the incumbent to receive a reasonable profit.

III. Unbundling must be made available at the smallest possible level at costs disaggregated on a service-by-service basis.

Federal guidelines should help determine whether: 1) network elements are provided in a manner that allows a requesting ESP to combine such elements in order to offer the desired telecommunications service to the public; 2) network elements are offered at the smallest feasible level that allows the ESP an ability to offer the competitive services desired; and 3) individual network elements are priced on a disaggregated, service-by-service basis and are offered to ESPs at the same rates at which the incumbent effectively pays itself for the use of the same network element.

A network element should include any basic service arrangement, function, or feature unbundled at the smallest practical level required by the ESP to offer competitive services. These should be at the very least identical to the network elements, and their basic service arrangements, functions, features, and capabilities used by the incumbent itself in the provision of the same or similar competitive services.

IV. The Commission should establish Federal guidelines for collocation so that ESPs may access the incumbent network with costs comparable to collocation within the Central Office.

The Commission should establish standards for collocation, including guidelines to determine whether physical collocation is not practical on technical grounds, space limitations, or for other reasons. The Commission should recognize the need of the requesting ESP to achieve collocation at its point of presence, or meet point, whenever the incumbent refuses physical collocation within its Central Office.

Physical collocation within the Central Office should be considered preferable, but not essential, and the ESP's point of presence should be an allowable alternative. The essential guideline to apply regarding acceptable arrangements for collocation, whether it be defined as physical or virtual, will focus on quality of service and costs. The service provider's need to access the incumbent network at a reasonable cost is paramount and should govern the outcome of how and where collocation will be provided.

In this vein, the Commission should establish guidelines that recognize acceptable collocation arrangements as any point of contact or presence at which no charges, other than those that would be levied at a point of physical collocation within the Central Office, may be levied.

V. The Commission should establish opportunities for alternative dispute resolution to minimize costs and lost business opportunities associated with protracted proceedings and complaint procedures.

The Commission should establish opportunities for the employment of appropriate alternative dispute resolution mechanisms between the incumbent and ESP. These should include participation of recognized trade association organizations where their involvement would be appropriate and would serve a public service by reducing multiple negotiations involving the same issues, or issues that continue to arise, in a single forum or in more than one forum. This will provide for the prompt and speedy resolution of issues in dispute and minimize the costs associated with protracted proceedings and negotiations.

The Commission should develop guidelines that encourage dispute resolution to take place between the parties before requests are submitted to state commissions or before other mechanisms are employed, such as those provided under Section 260 of the Act.


CONCLUSION

The Commission should develop safeguards that will secure the prohibition against: 1) an incumbent's subsidizing its telemessaging services through its telephone exchange service or its exchange access; and 2) an incumbent's preference and discrimination in favor of its telemessaging services in its provision of telecommunications services. The Commission should further develop Federal guidelines for interconnection, unbundling and collocation that allows ESPs to access network functions and features at costs that are just, reasonable and nondiscriminatory.

Network elements, their basic service arrangements, functions, features and capabilities, must be available to ESPs, on an unbundled basis, on the same terms and conditions as when utilized by the incumbent itself, which includes the requirement that the incumbent effectively pay itself for the use of a function or feature at the same rate it charges the ESP. Points of interconnection and arrangements for collocation must also be available on terms and conditions that are just, reasonable and nondiscriminatory in such a way that ESPs may offer competitive services when utilizing the incumbent network. Finally, the Commission should provide opportunities for the utilization of alternative dispute resolution mechanisms for the speedy resolution of disputes between the incumbent and the ESPs.

Respectfully submitted,

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SERVICES INTERNATIONAL (ATSI)

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